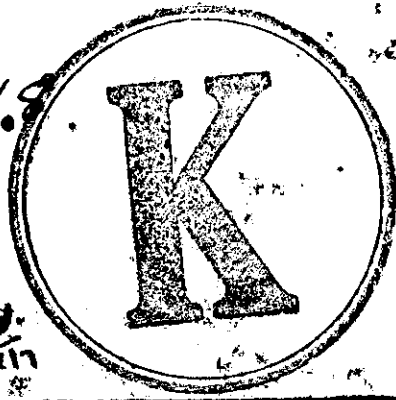


1947-48

49-50



File No. Extradition Rulings

47-48-49-50

Legal DEPARTMENT

A BRANCH

Subject:—Extradition Rulings of the Govt.
of India in regard to —

P 22 E

File No. Extradition Rulings

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Below copies of :-

- (1) Letter from the Secretary to the Honourable the Resident at Hyderabad, No. F. 2(5) - J/47, dated the 9th May 1947.
- (2) Endorsement from Government of India, Ministry of External Affairs and Commonwealth Relations, No. D. 3544/47-OS. V, dated the 11th December 1947 and its accompaniment.

No. 2233/46-A-I.
Political and Services Department.
Bombay Castle, 2nd January, 1948.

Forwarded with compliments for information and guidance to:-

The Chief Presidency Magistrate, Bombay,
The All District Magistrates,
All District Judges.
The Registrar, High Court, Appellate Side, Bombay.
The Prothonotary and Senior Master, High Court, Bombay.
The Home Department.
The Legal Department.

By order of the Government of Bombay.

For Chief Secretary to the Government of
Bombay,
Political and Services Department.

SVV
31.5.58.
4 a.

2/8/58

No. D 3544/47-OS, V.
Government of India
Ministry of External Affairs
and Commonwealth Relations
New Delhi, the 11th December 1947.

From
T. B. Crossley, Esquire, I. C. S.,
Deputy Secretary to the Government of India.

To
The Secretary to the Government of Pakistan,
Ministry of Foreign Affairs and
Commonwealth Relations,
Karachi.

Procedure relating to the testimony of witnesses
in the Courts of the Dominions of India and
Pakistan.

Sir,

I am directed to say that the Assistant Inspector of Explosives, East Circle, Calcutta, has received a summons from the Court of Magistrate, Mymensingh, East Bengal, to appear on the 16th December 1947 as a prosecution witness in a bomb case. The bombs were examined by him at Calcutta before partition. I am to point out that in view of the partition and the constitution of the Dominions of India and Pakistan, the procedure relating to the testimony of witnesses is governed by Chapter VI of the Indian Extradition Act as adapted by the two Dominions and that Commissions should issue from the one Dominion to the other for the testimony of witnesses. I am accordingly to request that the attention of the Pakistan Courts may be drawn to the above legal position and they be requested to issue the necessary commission under Chapter VI of the Indian Extradition Act.

I have the honour to be,

Sir,

Your most obedient servant, -

Sd./- T. B. Crossley,

Deputy Secretary.

No. D. 3544/47-OS V

Copy to all Provincial Governments in India for
information.

By order,

Sd./-

Deputy Secretary.

From:

Major A.C.K. Maunsell,
Secretary to the Honourable the
the Resident at Hyderabad.

To:

(1) The Home Secretary to the Government of Madras,
(2) The Chief Secretary to the Government of Bombay,
Political and Services Department, Bombay, (3) The
Chief Secretary to Government of Bengal, Calcutta,
(4) The Home Secretary to the Government of United
Provinces, Lucknow, (5) The Home Secretary to the
Government of Punjab, Lahore, (6) The Chief Secretary
to the Government of Bihar, Patna, (7) The Chief
Secretary to the Government of Central Provinces and
Berar, Nagpur, (8) The Chief Secretary to the
Government of Assam, Shillong, (9) The Chief Secretary
to the Government of the North West Frontier Province,
Peshawar, (10) The Chief Secretary to the Government
of Orissa, Cuttack, (11) The Chief Secretary to the
Government of Sind, Karachi, (12) The Honourable the
Agent to the Governor General, Resident and Chief
Commissioner in Baluchistan, Quetta, (13) The Chief
Commissioner, Coorg, (14) The Chief Commissioner,
Delhi, (15) The Chief Commissioner, Ajmer-Merwara.

Dated the 9th May 1947.

Commissions for the examination of witnesses residing
in British India issued by Criminal Courts in the
Hyderabad State.

.....

Sir,

I am directed to refer to section 21 of the Indian
Extradition Act, 1903 (XV of 1903) by which Civil Courts
in British India are empowered to record on commission
the evidence of witnesses in relation to any criminal
matter pending in any court or tribunal in any country or
place outside British India.

2. At present the practice has been that commissions
or letter of request issued by Criminal Courts in the
Hyderabad State for the examination of witnesses residing
in British India are received in this Residency through
H.E.H. the Nizam's Government and are forwarded to the
District Civil Courts or the Presidency Small Cause Courts for
execution in accordance with the provisions of section
21 of the said Act. In view however of the recent policy
of the Political Department to allow direct correspondence
between Indian States and Provincial Governments in certain
matters, His Exalted Highness's Government have been
requested to instruct their Criminal Courts to send such
commissions or letters of request direct to the District
Civil Courts or the Presidency Small Cause Courts as the
case may be.

3. I am to request you kindly to issue necessary
instructions in this behalf to the Civil Courts in
your Province.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- A.C.K. Maunsell

Secretary to the Hon'ble the Resident.

Letter.

From: Rostis, Bombay.

To : All District Magistrates,
Chief Presidency Magistrate, Bombay.

Bombay Castle, 14th January 1948.
No. 2174/46-A-I.

Subject: - Extradition of Political offenders.

Reference Government endorsement, No. 2174/46-A-I,
dated the 15th December 1947. Demands for the surrender of
fugitives from the States for offences of a political or
quasi political nature should not be complied with.

M. D. Bhat.

Chief Secretary to the Government of
Bombay, Political and Services Department.

SVV
31.5.56.
4 c.

No. 79/6/47-Public (B)
Government of India,
Ministry of Home Affairs.

.....

From:

R.N. Banerjee, Esquire, CSI, CIE, ICS,
Secretary to the Government of India.

To:

The Chief Secretary to the Government of Assam,
Home Department (Miscellaneous Branch),
Shillong.

New Delhi, 3, the 13th January 1948.

Subject: Extradition proceedings to and from
Pakistan.

Sir, With reference to your letter No. HMI, 125/47/5, dated the 3rd December 1947, on the subject mentioned above, I am directed to say that Article 4 of the Indian Independence (Legal Proceedings) Order, 1947, makes special provisions with regard to proceedings pending in any Civil or Criminal Court in Assam etc., other than a High Court, immediately before the 15th August 1947. ~~High Court immediately~~ Such proceedings are to be continued in the same court as if the Indian Independence Act had not been passed, and, for the purpose of the said proceedings, the courts concerned shall continue to have the same jurisdiction and powers which they had immediately before the said date. Further, when an order is passed by such court in the said proceedings, effect shall be given to it in a Dominion (e.g. Pakistan) as if it had been passed by a court of competent jurisdiction within that Dominion. It follows that, if a warrant or summons is issued by a court in Assam (other than a High Court) in a proceeding pending before it immediately before the 15th August 1947, effect should be given to it in Pakistan in the same manner as effect would have been given to it if the Indian Independence Act had not been passed. If, however, a warrant for the arrest of an accused is not issued in any such proceedings, effect cannot be given to it in Pakistan without formal extradition proceedings under the provisions of the Fugitive Offenders Act, 1881.

2. As regards the judgment of the Bombay High Court referred to (copy enclosed), it seems that the attention of the Bombay High Court was not drawn to the Indian ~~Independence~~ Independence and (Legal Proceedings) Order, 1947, but the general law is as stated therein. As, however, the judgment does not decide that the general law stated therein will apply even in a case to which Article 4 of the said Order applies, there is, in the opinion of the Government of India, no inconsistency between it and the opinion expressed in the preceding paragraph.

3. With regard to the point raised in para 2 of your letter, the Code of Criminal Procedure extends to British India which expression under Article 4(2) of the India (Adaptation of Existing Indian Laws) Order, 1947, will be construed in India as meaning all the Provinces of India. In proceedings other than "pending proceedings" section 73, 74, 84, 85 and 86 of the said Code cannot therefore be construed as authorising the issue of process to areas to which the Code as in force in India ~~and~~ does not extend, namely, the areas included in Pakistan..

I have the honour to be,
Sir,
Your most obedient servant,
Sd./- R. N. Banerjee.

~~Secretary to the Government of India~~
Secretary to the Government of India.

No. 79/6/47-Public (B), Dated New Delhi, 3, the 13th Jan. '48.

Copy together with a copy of the letter under reply forwarded to all Provincial Governments (except Assam) and Chief Commissioners for information and guidance.

Copy forwarded to the External Affairs and Commonwealth Relations for information.

By order,

Sd./- A. V. Raman.

Assistant Secretary to the Government of India.

Accompaniment

Judgment recorded by the High Court in Criminal application for revision No. 526 of 1947, in the case of Abubakar Dawood Agotwalla, the petitioner.

Mr. S. G. K. Hussain, Advocate, for the applicant.
The Government Pleader for the Crown.
Mr. V. N. Chhatrapati, Advocate, for the Surety.

Coram: Chagla, C.J. and
Gajendragadkar, J.

6th November 1947.

Oral Judgment per Chagla C.J.:

This is a revisional application from an order made by the learned Presidency Magistrate, 8th Court, Esplanade, ordering the arrest of the applicant in execution of a warrant issued by the Lahore Court and directing that he should be sent to Lahore under police custody. The order was made on the 6th September 1947 and it obviously cannot stand. On the 6th September 1947 Lahore was part of foreign territory and our Court here cannot execute the warrant of a foreign Court unless there are proper extradition proceedings for the purpose. The order will, therefore, be set aside, the rule made absolute.

By the Court,

Sd./- S. H. Melavadi

Deputy Registrar.

True copy.
Sd./ 24.12.47
Deputy Registrar.

SVV
Sl. 5. 56.
4 c.

- 3 -

Copy of letter No. HMI, 124/47/8 dated Shillong the 3rd December, 1947 from Sir Harold Dennehy, C.S.I., C.I.E., I.C.S., Chief Secretary to the Government of Assam to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.

Subject : EXTRADITION PROCEEDINGS TO AND FROM
PAKISTAN.

I am directed to refer to paragraph 4 of the Indian Independence (Legal Proceedings) Order, 1947. In accordance with sub-paragraph 3 effect must be given within the territories of either Dominion to any order of any Civil or Criminal Court in Bengal or Assam passed before the "appointed date" as if it had been passed by a Court of competent jurisdiction within that Dominion. In the view of this Government, during the interim period and in cases which were pending before the 15th August in Courts of Assam, there is no necessity for extradition proceedings to secure the attendance of an accused person or witness from East Bengal, in light of these provisions. The Government of India will however doubtless have seen a report in the daily press published on November the 7th of Bombay ruling to the effect that Courts in the Indian Dominion cannot execute a warrant of arrest issued by a Court in any foreign territory including a Court in the West Punjab, unless there are regular extradition proceedings. The Government of Assam have not yet been able to procure a regular report of this ruling but they feel it essential at the earliest moment to secure clarification of the position from the Government of India.

2. In regard to issue of warrants and summons issued during the interim period but after the 15th August 1947, this Government conceive that as Sections 73 and 74 and Section 84 to 86 of the Criminal Procedure Code apply both in the Dominion of India and in Pakistan that the conclusion of a standstill agreement implies a continuance of application of these provisions between authorities in both Dominions. I am to enquire whether the Government of India accept this view.

SVV
31.5.56.

No. 79/9/47-Public (B).
GOVERNMENT OF INDIA.
MINISTRY OF THE HOME AFFAIRS.

From

R.N. Banerjee, Esq., C.S.I., OIK., I.C.S.,
Secretary to the Government of India;

To

The Secretary to the Government of United Provinces,
Home Department (Criminal), LUCKNOW.

New Delhi-3, the 28th January, 1948.

Subject: Extradition procedure.

Sir,

I am directed to refer to your letter No. 3758/VI-875-47, dated the 12th November 1947 and to reply as follows to the questions raised therein.

2. (i) States which have acceded to Indian Union & Hyderabad.

In the case of the States which have acceded to the Indian Union and of Hyderabad, section 7 of the Indian Extradition Act, 1903, (under which extradition was being arranged before the transfer of power) has become inoperative owing to the disappearance of political agents, and the best course would, therefore, be to follow the procedure laid down in section 9 of the Act, pending suitable amendment of section 7.

(ii) Pakistan and seceding States.

As regards the Dominion of Pakistan and the States which have acceded to that Dominion, the Government of India have taken up with the Government of Pakistan the question of a suitable procedure for extradition. Provincial Governments will be apprised of the procedure as finally agreed upon between the two Governments.

(iii) India & Nepal.

In regard to extradition arrangements between India and Nepal, the procedure hitherto subsisting should be continued. This has not been affected in any way by the constitutional changes.

(iv) Service of Summons and execution of Commissions.

With regard to this point, raised in para 5 of your letter, I am to say that the execution of commissions issued by criminal courts outside the provinces of India is regulated by section 21 of the Indian Extradition Act, which applies the relevant provisions of the Code of Civil Procedure viz. Part III of the Code read with Order XXVI of Schedule I thereto. This procedure does not contemplate direct correspondence between the State authorities and the District Magistrates concerned. Where the commissions are issued at the instance of foreign tribunals the procedure prescribed in Rules 18 to 22 of Order XXVI will apply. In all such cases the High Court has ~~the right to direct the execution of the commissions to be moved and the relevant letter of request issued by the foreign court is to be brought before the High Court in the manner contemplated in clauses (b) and (c) of sub-rule (2) of rule 19 of the Order.~~ The procedure for the return of the Commissions will be as in rule 19 of the said Order. Rule 19, however, does not apply to the courts referred to in clauses (a) and (b) of section 78 of the Code. In the case of such courts, direct communication between the courts concerned appears to be contemplated by section 78 read with Order XXVI of the code.

Therefore, where section 21 of the Act applies, the procedure prescribed thereunder as regards the issue and return of commissions should be followed and not some other procedure. I am ~~to point~~ point out that for dealing with commissions for the examination of witnesses issued by criminal courts in the Provinces of India when those witnesses reside in an Indian State), the procedure prescribed under section 803 of the Code of Criminal Procedure is not available in the absence of a political agent for the states as contemplated in sub-section (2) thereof. The question of amending section 803 of the Code is under the Government of India's consideration..

I have the honour to be,

Sir,

Your most obedient servant,

Sd./- R. N. Banerjee.

Secretary to the Government of India.

No. 79/9/47-Public (B)- New Delhi-3, the 28th January 1948.

Copy together with a copy of the letter under reply forwarded to all Provincial Governments and Chief Commissioners for information and guidance.

2. Copy together with a copy of the letter under reply forwarded for information to the Ministries of States and External Affairs & Commonwealth Relations.

By Order,

Sd./- A. V. Rowan.

Assistant Secretary to the Government of India.

No. 8233/46-A.-I.

Political and Services Department.
Bombay Castle, 21st February 1948.

Forwarded with compliments for information and guidance to :-

in continuation of Government endorsement No. 8233/46-A-I, dated the 4th February 1948.

By order of the Governor of Bombay,

for Chief Secretary to the Government of
Bombay,
Political and Services Department.

SVV
31.5.56.
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Copy of letter No. 3758/VI-375-47 dated 12-11-1947 from Secretary to Government, United Provinces, Lucknow to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi-3.

Subject : Extradition procedure.

I am directed to request the instructions of the Government of India regarding the procedure which should be followed, in view of the lapse of Paramountcy, in regard to the extradition of accused between the Indian Dominion and

- (i) Indian States which have joined and Indian Dominion,
- (ii) Indian States which have joined the Dominion of Pakistan.
- (iii) Indian States which have not so far joined either of the two Dominions or may not join either Dominion at all,
- (iv) the Dominion of Pakistan, and
- (v) Nepal.

2. In this connection I am to invite a reference to the observations made in paragraph 3(1) of Memorandum No. F. 17 (12) IB/47, dated July 24, 1947, from the Secretary to H.E. the Crown Representative to the Residents of various Indian States etc. which reads as follows:

"provided States agree extradition from State A can be arranged directly between the State and Province concerned" and to inquire if any arrangements have been agreed upon with the Indian States as proposed in the Memorandum. In the view of the Provincial Government such arrangements, should be the subject of all-India policy rather than for individual adjustment between the different provinces and States.

3. Paragraph 3(ii) of the same Memorandum directs that as section 7 of the Indian Extradition Act is no longer operative, Indian States may now make use of section 9 of the Act. This requires that requisitions for extradition should be made to the Provincial Governments, ~~whereas~~ while under section 7 extradition warrants could be sent direct by Political Agents to the District Magistrates concerned. The latter procedure was more expeditious and avoided the bottleneck of all communications regarding extradition proceedings having to pass through the Provincial Governments.

4. I am now to invite attention to paragraph 3 of letter No. F. 24-R(8)/47 dated April, 17, 1947, from the Secretary to H.E. the Crown Representative, Political Department, to all Provincial Governments which requires that correspondence with Indian States shall be carried on by the Secretaries of the Provincial Governments. This procedure in extradition matters will inevitably result in great delay, and in the opinion of the Provincial Government, it would be advantageous to allow the State authorities to correspond direct with the District Magistrates and vice versa on all extradition matters. If in any particular case, the District Magistrate or the State concerned feel that there are not sufficient grounds for the extradition of a particular accused the matter may be taken up with the Provincial Government.

5. Similarly in the opinion of the Provincial Government, the procedure laid down in the letter of April 17, 1947, should not be applied to correspondence regarding the service of summons on witnesses in criminal cases and the execution of commissions issued by criminal courts in Indian States (section 21 of the Indian Extradition Act, 1903). In this case also direct correspondence between the State authorities and the District Magistrates concerned may be allowed.

6. I am to request that early instructions in the matter may please be issued, and in case a uniform procedure is not followed in respect of all States, I am to request that instructions may be issued regarding the procedure to be followed with each group of States mentioned in paragraph 1.

SVV
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Copy of a letter from the Government of India, Ministry of External Affairs and Commonwealth Relations, No. P. 9341/47-OS, V(PA K), dated the 10th March 1946, to All Provincial Governments and Chief Commissioners.

Extradition of fugitive Offenders from Pakistan to India and vice versa under the Fugitive Offenders Act, 1881 - Procedure.

I am directed to say that the Government of India are advised that extradition of offenders as between the Dominions of India and Pakistan, which form part of His Majesty's Dominions will be regulated by Part I of the Fugitive Offenders Act, of 1881 read with Section 19 of the Indian Extradition Act, 1903, which by virtue of an Order-in-Council dated the 7th March 1904 is to be recognised, and given effect to, throughout His Majesty's Dominions, as if it were a part of the Fugitive Offenders' Act of 1881. The following ~~extrajudicial~~ procedure for the extradition of fugitive offenders from Pakistan to India should accordingly be followed.

2. The Provincial Government should send to the Government of India for transmission to the Central Government of Pakistan, warrants with duly authenticated copies of depositions and other documents on which they rely to prove that there is a strong and probable presumption that the fugitive committed the mentioned in the warrant. The depositions, warrants and documents should be authenticated in the manner provided in Section 89 of the Fugitive Offenders' Act, 1881. The Government of Pakistan, on being satisfied that the warrant has been issued by some person having lawful authority to issue it, will then take action under the Act. After the completion of proceedings the Pakistan Government may then order that the fugitive offender be conveyed and produced before the Court in India which issued the original warrant.

3. The Government of Pakistan have agreed to the procedure outlined above and are issuing similar instructions to the Provincial Governments in Pakistan in this regard.

4. The procedure prescribed above should be observed by Indian Provincial Governments in respect of warrants received from Pakistan through this Ministry.

GOVERNMENT OF BOMBAY
 Political and Services Department,
 Circular No. 2233/46-A,
 Bombay Castle, 2th June 1948.

C I R C U L A R .

The undermentioned officers and Departments are informed that the adaptation in respect of clause (40) of Section 3 of the General Clauses Act, 1897, referred to in paragraph 3 of the Government of India, Ministry of Home Affairs, Circular letter No. 8/1/48-Public, dated the 30th March 1948, copy forwarded under Political and Services Department Enforcement No. 2233/46-A, dated the 23rd April 1948, has been carried out, vide Ministry of Law (Reforms) Notification No. G. O. 37, dated the 23rd March 1948 (page 447 of the Gazette of India Extraordinary dated the 23rd March 1948.).

By order of the Governor of Bombay,

SD/-

For Chief Secretary to the Government of Bombay,
 Political and Services Department.

SVV
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 4 c.

LETTER.

From - R KSTIS, BOMBAY.

To - ALL DISTRICT MAGISTRATES,
CHIEF PRESIDENCY MAGISTRATE,
BOMBAY.

No. 1580/46-A.

Bombay Cgatel, 16th June 1948.

Subject: - Extradition.

It has been brought to the notice of Government that the instructions issued in paragraph 2 of Government endorsement, No. 1580/46-A-I, dated the 12th August 1947, are opposed to the provisions of section 3 of the Indian Extradition Act, 1903, and therefore are not warranted by law. Paragraph 2 of the Government endorsement referred to should accordingly be treated as cancelled.

M. D. Bhat,

for Chief Secretary to the Government
of Bombay,
Political and Services
Department.

SVV
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4 c.

Copies of a letter from the Government of India, Ministry of External Affairs and Commonwealth Relations, No. F. 31-4/48-PAKII dated the 21st June 1948 and its accompaniment.

Subject: - Service of legal processes issued by Indian Courts against persons residing in Pakistan.

I am directed to forward copy of letter No. S-42/INQ/48/1-522 dated the 19th May 1948, from the Secretary to the High Commissioner for India in Pakistan, Karachi, on the subject mentioned above. The question of making reciprocal arrangement between the two Governments for the services of processes in their territories is under consideration. Until an agreement is reached in the matter the Courts in the Provinces of Madras etc., may be advised to take action as suggested in the last paragraph of the enclosed letter.

Copy of letter No. S-42/INQ/48/1-522, dated the 19th May 1948, from the Secretary to the High Commissioner for India in Pakistan, to the Secretary to the Government of India, Ministry of External Affairs and Commonwealth Relations, New Delhi.

Subject :- Service of legal processes issued by Indian Courts against persons residing in Pakistan.

I have the honour to say that this office is daily receiving summonses and other legal processes issued by Civil and Criminal Courts in India for service against persons residing in Pakistan. In the beginning such processes were being sent by this Office to the Government of Pakistan for service but the Government of Pakistan returned them unserved with the remarks that no arrangement existed between the Governments of India and Pakistan for service of legal processes of their respective courts through their High Commissioners. This Office therefore, returned the processes to the issuing courts for service on the parties direct by post.

It is now observed that some courts in India instead of sending processes to parties direct by post send them for service to the Government of Pakistan direct. Such processes are also returned by Pakistan Government to this office with similar remarks.

To avoid unnecessary expense in sending processes to this office or to the Government of Pakistan and their eventual return to the issuing courts, I would suggest that the Provincial Governments may be advised to issue circulars for the guidance of their respective courts, that until arrangement has been reached between the two Dominions Governments with regard to the service of legal processes, they may send the processes to the parties direct on their known addresses by post.

No. _____

Below copies of an endorsement from the Government of India, Ministry of External Affairs and Commonwealth Relations No. F. 31-4/48-Pak (II) dated the 20th September 1948 and its accompaniments.

No. 2233/48-A.
Political and Services Department,
Bombay Castle, 21st October 1948.

Forwarded with compliments for information and guidance to:-

The Commissioners of Divisions, etc.,

in continuation of Government Endorsement No. 2233/48-A,
dated the 20th July 1948.

By order of the Governor of Bombay,

Sd./-

for Chief Secretary to the Government of
Bombay,
Political and Services Department.

SVV

1.6.56.

4 c.

No. F. 31-4/48-PAK(II).
GOVERNMENT OF INDIA.
Ministry of External Affairs and
Commonwealth Relations.

New Delhi, the 20th September,
1948.

From T.B. Crossley Esq., O.B.E., I.C.S.,
Deputy Secretary to the Government of India.

To The Secretary to the Government of West Bengal,
Judicial Department, Calcutta.

Subject:- Service of legal processes issued by
Indian Courts against persons residing in
Pakistan.

Sir,

I am directed to refer to your letter No. 4024 J dated
the 11th August, 1948, on the subject mentioned above and
to say that the instructions issued under this Ministry's
letter No. F. 31-4/48-Pak. II, dated the 21 June, 1948, should
be considered as supplementary to and not in supersession

of those previously issued on the subject. In the absence
of any provision in the Code of Criminal Procedure authorising
service of summonses etc., by post, summonses etc., issued
by criminal courts under that Code cannot be sent by
post for service on the persons concerned whether they are
in India or in Pakistan.

Yours faithfully,

Sd./- X X X
Deputy Secretary.

No. F. 31-4/48-PAK. II.

1. Copy with a copy of the communication referred to above
and its enclosure, forwarded to all Provincial Governments
(Except the Government of West Bengal) and Chief Commissioners,
with reference to this Ministry's letter No. F. 31-4/48-PAK. II,
dated the 21st June, 1948.

2. Copy, with a copy of the communication referred to
above, and of its enclosure, forwarded to the High Commissioner
for India in Pakistan, Karachi with reference to this
Ministry's endorsement No. F. 31-4/48-PAK. II, dated the 21st
June, 1948.

By order,

Sd./- X X X

Deputy Secretary.

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Copy of letter No. 4024J, dated the 11th August, 1948, from Secretary to the Government of West Bengal, Judicial Department, Calcutta, to the Secretary to the Government of India, Ministry of External Affairs and Commonwealth Relations, New Delhi.

Subject:- Service of legal processes issued by Indian Courts against persons residing in Pakistan.

I am directed to refer to the correspondence ending with your letter No. F. 31-4/48-Pak. II, dated the 21st June, 1948, on the subject noted above and to forward herewith a copy of letter No. 2424, dated the 16th July 1948, from the Chief Presidency Magistrate, Calcutta, seeking clarification on the subject. This Government are inclined to presume that the Government of India intend laying down that the processes which are not covered by the previous instructions of the Government of India as interpreted by the Chief Presidency Magistrate, Calcutta, should be sent by post. I am now to request that this ~~presumption~~ presumption may be confirmed or corrected at an early date as otherwise there may be more complications in future.

Copy of letter No. 2424, dated the 16th July 1948, from Shri N. K. Chaudhary, I. C. & Chief Presidency Magistrate, Calcutta to the Secretary to the Government of West Bengal, Judicial Department.

Subject:- Service of legal processes issued by Indian Courts against persons residing in Pakistan.

Reference:- Your Memo. No. 3863(77)J, dated 30-6-48, incorporation therein letter No. J. 42/IHQ/48/1-322, dated 19-6-48, from Secretary to the High Commissioner for India in Pakistan and letter No. F.31-4/48-PAK. II, dated 21-6-48 from Assistant Secretary, Government of India, Ministry of External Affairs and Commonwealth Relations.

Sir,

I have the honour to state that the advice given in the letters under reference on the above subject, in so far as Criminal Courts are concerned, vis-a-vis the procedure already laid down by Government of India as requires clarification, and I would refer you to the previous procedure as analysed below.

2. Processes issued by a Criminal Court in India include Summons on or warrants against witnesses, summonses on accused persons, Warrants of Arrest, Proclamation & Attachment, Notices as provided under certain sections

of the Criminal Procedure ~~xxxxxx~~ Code, however, do not come under the category of Processes. Issue of Proclamation and Attachment is the step subsequent to and consequent upon the failure of execution of a Warrant of Arrest. So far as persons in Pakistan are concerned the question of issued proclamation and attachment does not arise at all.

3. Issue of Warrants of arrest against accused persons in cases instituted subsequent to the 15th August, 1947 on extraditable offences is regulated by the Extradition procedure laid down in Government of India Ministry of E.A. & C.R., No. F. 23-1/47-OS. V(PAK), dated 10.3.48 (as embodied with your No. 1515(60)J, dated 23.3.48).

4. Necessity of issue of summonses on witnesses (or warrants for that matter) has been obviated by the adoption of the procedure of examination on commission as laid down in Govt. of India, Ministry of E.A. & C.R. No. D. 849/48 PAK, to your address and their No. 35544/47-OS. V, dated 11-12-47 to Govt. of Pakistan (as embodied with your No. 950(78)J, dated 23.2.48).

5. Issue of summonses on accused persons or warrants against them (as also summonses on and warrants against witnesses) in cases pending before a Court in India immediately before the 15th August, 1947 appears to be regulated by Govt. of India, Ministry of Home Affairs No. 79/6/47-Public (B), dated 13-1-48 (as embodied with your No. 1723(76)J, dated 12.4.48).

Now only the question of issue of summonses on accused persons residing in Pakistan in cases instituted after 15.8.47 stood unattended to.

This question appears to be purely academic, for in all cases warrants can be issued instead of summonses. It is not, therefore, understood how the question of sending processes by post to individuals residing in Pakistan arises. I may be enlightened on this point.

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Copy of a letter from the Government of India,
Ministry of External Affairs, No. F. 32-19/48-Pak-II,
dated the 17th November, 1949.

Subject : Extradition of Fugitive offenders from
Pakistan to India and vice versa -
procedure for the extradition of fugitive
offenders who ~~have~~ are undergoing
trial or imprisonment.

"I am directed to refer to this Ministry's letter
No. F. 23-1/48-O.S.V(Pak), dated the 10th March 1948,
on the subject of procedure of extradition of fugitive
offenders from Pakistan to India and vice versa under
the Fugitive Offenders Act, 1881, (copy enclosed) and
to say that it has been agreed between the Governments
of India and Pakistan that in a case where a request is
made by one Dominion for the extradition of a fugitive
offender who has been accused of an offence not being
the offence for which his surrender is asked, or who is
undergoing sentence under any conviction in the other
Dominion, the offender should not be surrendered until
after he has been ~~and~~ discharged whether by acquittal
or on expiration of sentence or otherwise."

SM.
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